

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE)	
)	
UNCOMMON GROUND, INC.)	Case No. 98-30358
)	
)	
Debtor.)	MEMORANDUM OF
DECISION)	
)	AND ORDER
)	
_____)	

Kenneth L. Anderson, Lewiston, Idaho, for Debtor.

Gary McClendon, Office of the U.S. Trustee, Boise, Idaho.

This matter comes before the Court upon the application of Kenneth L. Anderson, counsel for the Debtor ("Applicant"), for allowance of compensation, primarily for services he rendered when the case was a short-lived chapter 11 proceeding. The United States Trustee raised several objections to the application, and the Court took the matter under advisement following hearing.

BACKGROUND

The Debtor filed a voluntary chapter 11 petition for relief on August 14, 1998. Applicant represented the Debtor at the commencement of the case. Applicant applied for approval of his employment as counsel for the Debtor in Possession on September 25. No order was ever entered on that application. The Debtor moved to convert the case to a chapter 7 liquidation on October 30, and an order of conversion was entered upon hearing November 24, 1998.

The application requests allowance of compensation in a total amount of \$3,270.00. Appropriate notice was given, and no objections raised except by the U. S. Trustee. The Court has reviewed the Applicant's submissions in detail as well as the objections of the U. S. Trustee, and finds and concludes as follows.

DISCUSSION

I.

The application seeks compensation in the amount of \$300.00 for services rendered by Applicant prior to the filing of the petition for relief on August 14. This amount, however, is not properly part of an application for

allowance of compensation under § 330 of the Code; it is a pre-petition claim.¹

This request for compensation will be DENIED.

II.

Compensation is allowable only for services rendered after the Court has approved the employment of counsel. *In re Ferreira*, 95 I.B.C.R. 282, 283 (Bankr.D. Idaho 1995); *In re Lindsey*, 1995 WL 472120 (Bankr.D. Idaho 1995). In this District, it is not the date of entry of the order approving employment which is controlling since the effective date of approval relates back under L.B.R. 2014.1(c) to the date the application was filed.²

The application requests \$1,044.00 for services rendered from the commencement of the case on August 14 through the filing of the application for approval of employment on September 25.³ These services predate the filing of the application and thus the effective date of approval of employment,

¹ The Court could, but will not under all the circumstances, construe the existence of that \$300.00 claim as creating a disqualifying factor under § 327(a) by virtue of making Applicant a creditor of the estate.

² No order was ever entered in this case approving the Applicant's employment, however, there appears to have been no impediment to entry of such an order, had one been timely submitted. The Court will approve Applicant's employment as counsel for the Debtor in Possession effective as of the filing of the application on September 25.

³ The Court has independently reviewed the itemization of services rendered by date, as shown on the attachments to the application, and has confirmed the U.S. Trustee's calculations in its objection as to the total amounts requested in each of the relevant time periods.

and are not compensable. The request for allowance for compensation in the amount of \$1,044.00 for this period of time is therefore DENIED.

III.

The application requests \$252.00 for services (other than services related to seeking approval of compensation discussed in Part IV, below) rendered after the conversion of the case to a chapter 7 liquidation on November 24. Section 330(a)(4)(B) excludes services to a chapter 7 debtor from the categories of legal services which may be compensated under § 330. *Ferreira*, 95 I.B.C.R. at 283; *In re Kinnemore*, 95 I.B.C.R. 157, 158 (Bankr. D.Idaho 1995). The request for compensation of this \$252.00 is therefore also DENIED.

IV.

The application seeks allowance of \$540.00 incurred in the preparation of the fee application and supporting documentation.⁴ The entirety of this request is for paralegal time billed at \$60.00 per hour. The U.S. Trustee notes that a portion of this time reflects an effort to adapt Applicant's internal billing system in order to generate information required by, inter alia, the U.S.

⁴ While these services were, like those addressed in Part III, above, also rendered after conversion, they were not services rendered to the Debtor as much as they were rendered by Applicant on his own behalf in seeking to establish a right to compensation. The Court will review these fees under § 330(a)(6) and not § 330(a)(4)(B).

Trustee guidelines. The U.S. Trustee asserts that this an overhead expense which should be borne by the Applicant.

That compensation awarded under § 330 can include compensation for efforts required to comply with the application and reporting requirements of the Code is not seriously in doubt. *In re Leed*, 97.3 I.B.C.R. 95, 96 (Bankr. D.Idaho 1997). The issue is generally one of the reasonable extent of such services and appropriate amount of compensation for the same. This is recognized by, among other things, § 330(a)(6) which provides for award of compensation for the preparation of a fee application but only based on the level of skill reasonably required to prepare that application.

Applicant submits, and the U.S. Trustee does not contest, that a total of six hours was actually invested by his paralegals in converting internal forms and processes in order to comply with the chapter 11 reporting guidelines. Two hours were charged in the instant case, and two hours charged in each of two other matters in which applications were recently filed. The current application, therefore, reflects two hours in such administrative work and an additional seven hours in preparation of all the fee application pleadings and supporting detail.

The Court observes that only paralegal time was charged in regard to fee issues. Undoubtedly there was some supervisory time and review required of

Applicant, but it appears compensation for those services is not sought. This is a reasonable exercise of billing judgment which, in combination with the fact that para-professionals were used with significantly lower hourly rates, speaks in favor of allowance.

On the other hand, seven hours appears excessive for preparation of fee application materials such as those involved in this case. This is especially true when it is considered that an additional two hours (out of six) were charged here for the “form conversion” aspect of the process.

The Court is sensitive to the fact that the U.S. Trustee guidelines require reporting and segregation of time spent and expenses incurred in a format unlike most standard law office bills, and has been relatively lenient in allowing compensation at a slightly higher level for the first case in which counsel has had to adapt its internal fee billing process and procedures to meet those guidelines. While those who wish to practice in the chapter 11 arena are necessarily and reasonably required to adapt to their billing processes so that these guidelines can be met, there is some initial expense reasonably incurred and compensable. Of course, most of this conversion is a one-time expense, not required (or expected) to be repeated in subsequent chapter 11 cases.

In consideration of the totality of the circumstances, the Court will not make any further reduction in allowance of compensation by virtue of the

charges asserted here for either converting the forms or preparing the fee application, particularly since only paralegal time is submitted for compensation.

ORDER

Based upon the foregoing, the total request of the Applicant in the amount of \$3,270.00 will be reduced by \$300.00 for pre-petition services, by \$1,044.00 for post-petition, pre-application services, and by \$252.00 for post-conversion services not related to the fee approval process. Applicant will therefore be allowed compensation pursuant to § 330(a) in the amount of \$1,674.00. Such allowance is entitled to treatment as an administrative expense pursuant to § 503(b)(2). However, because this allowance relates to the superseded chapter 11 case, its payment will be subordinated to all chapter 7 administrative expenses pursuant to § 726(b).

Dated this 3rd day of August, 1999.

TERRY L. MYERS
UNITED STATES BANKRUPTCY JUDGE